in ejectment against him. It will be sufficient if there was threat of eviction and if the tenant as a result of such threat attorns to the real owner, he can set up such eviction by way of defence either to an action for rent or to a suit in ejectment. If the tenant, however, gives up possession voluntarily to the title holder, he cannot claim the benefit of this rule."

In *Annamalai Chettiar's* case,[8] the second case relied on by Inche Wong, the following passages occur in the judgment:

"In (*Kunwar's* case[6]), the Privy Council has laid down that a tenant who has been let into possession cannot deny the landlord's title however defective it may be, so long as he has not openly restored possession by surrendering to his landlord. In *Muthu Nayan* v. *Sinna Sama Vaiyan*[9] this court has laid down that a tenant is estopped from denying the title of the landlord without his surrendering possession.

Section 116 of the Evidence Act clearly says that the tenant is estopped from denying, during the continuation of the tenancy, that the landlord had title at the commencement of the tenancy. Possession and permission being established, estoppel would bind the tenant during the continuation of the tenancy and until he surrenders his possession. The words 'continuation of the tenancy' have been interpreted to mean 'during the continuation of the possession that was received or under the tenancy in question', and courts have repeatedly laid down that estoppel operates even after the termination of the tenancy so that a tenant who had been let into possession, however defective it may be, so long as he has not openly surrendered possession, cannot dispute the title of the landlord at the commencement of the tenancy.

The estoppel contemplated by section 116 of the Indian Act is, as I have observed, restricted to the denial of title at the commencement of the tenancy and by implication, it follows that a tenant is not estopped from contending that the landlord had no title before the tenancy commenced or that the title of the lessor has since come to an end."

It seems to me that the effect of the above decisions may for the purpose of this appeal be summarised as follows: for so long as he remains in possession a tenant may not deny the title of his landlord at the beginning of the tenancy. If he wishes to deny his landlord's title at the beginning of the tenancy, he must first surrender possession. But without surrendering possession the tenant may say that his landlord's title has since the beginning of the tenancy come to an end; or that he (the tenant) has been evicted by a paramount title holder; or that even though there was no actual eviction or dispossession from the property, under a threat of eviction he has as a result of such threat attorned to the paramount title holder.

But what exactly does the tenant say here? He does not say that he has been evicted by Sharikat Bakti Ltd. or that under a threat of eviction he has as a result of the threat attorned to the Sharikat. All he says is that since the purchase of the land by the Sharikat he has received a letter from the Sharikat's solicitors warning him not to pay rent to the landlord. In my view he is entitled to say this even though he remains in possession of the house; but what he says is insufficient evidence that the landlord's title has come to an end.

In view of this, I am of the opinion that the learned president was wrong in setting aside the warrant of distress and I would therefore allow this appeal with costs here and below.

Appeal allowed.

Solicitors: *T. Selvarasan; Laycock & Ong.*

TOMM WONG v. PUBLIC PROSECUTOR

[F.C. (Ong C.J., Gill and Ong Hock Sim F.JJ.)

January 29, 1973]

[Ipoh — Federal Court Criminal Reference No. 6 of 1972]

Penal Code s. 170 — Personating a public servant — Meaning of words "in such assumed character does or attempts to do any act under colour of such office" — Whether words cover acts which fall outside permitted limits of authority or power.

In this case the applicant had been charged for the offence of personating a public servant. It appeared that he had gone to a police station to lodge a report and pretended to hold the office of a detective police constable. The learned magistrate acquitted the applicant holding that the applicant had not done any act "under colour of such office," as making a report is a right open to any member of the public. On appeal the order of acquittal was set aside by the High Court, but the judge agreed to refer the question of law to the Federal Court as follows:—

"Do the words 'in such assumed character does or attempts to do any act under colour of such office' appearing in section 170 of the Penal Code refer only to such acts as could legally be done by a person who in fact and in truth holds such office or do such words also cover acts which fall outside the permitted limits of the actual authority or power conferred or vested in the public servant whose character the accused pretends to assume."

Held: an offence under section 170 of the Penal Code is committed whenever any person falsely holds himself out to be a public servant and does or attempts to do any act whatsoever under colour of such office. The harmless character of that act or attempt may be relevant as to punishment, but the offence under section 170 is nonetheless committed whenever any act is done or attempted to be done by a person impersonating a public servant.

Case referred to:-

(1) *Emperor* v. *Aziz-ud-din* (1905) I.L.R. 27 All. 294, 295.

FEDERAL COURT.

Choong Yik Son for the applicant.

Gunn Chit Tuan (Deputy Public Prosecutor) for the respondent.

Ong C.J.: The question referred to this court under the provisions of section 66 of the Courts of Judicature Act 1964 is as follows: —

"Do the words 'in such assumed character does or attempts to do any act under colour of such office' appearing in section 170 of the Penal Code refer only to such acts as could legally be done by a person who in fact and in truth holds such office or do such words also cover acts which fall outside the permitted limits of the actual authority or power conferred or vested in the public servant whose character the accused pretends to assume."

The applicant Tomm Wong had been tried in the Magistrate's Court at Ipoh and acquitted of a charge which reads: —

"That you on 7.4.1971 at 9.20 p.m. at the New Town Police Station, Ipoh, in the District of Kinta, in the State of Perak, pretended to hold the office of the detective police constable 1209 and under such assumed character did lodge a report at the New Town police Station under colour of such office and thereby committed an offence punishable under section 170 of the Penal Code."

Section 170 of the Penal Code relates to the offence of personating a public servant and provides: —

"Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under

colour of such office, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both."

The facts were not in dispute. At about 9.20 p.m. on April 7, 1971 the applicant had been taken, along with three others, by the police patrol car to New Town Police Station, Ipoh. There he made a report in the standard form No. 55, wherein under the heading of "occupation" he wrote "S.S. Police, Penang", and appended his signature thereto followed by the words: "D.P.C. 1209". As to the contents of the report, there was not a word therein suggesting that, at the bar of the Merlin Hotel in Ipoh, where he had had an altercation with and struck one Goh Ah Kong, he was there by virtue of his pretended office or that any act was done by him under colour of such office.

The learned magistrate took the view that an essential ingredient of the offence under section 170 had not been proved, quoting *Ratanlal* who said: —

"The phrase 'an act under colour of such office' points to acts *which could not have been done without assuming official authority or responsibility* and would not connote acts of a ministerial or mechanical character, which might be done without the justification of office in the person doing them".

In coming to his decision the learned Magistrate said: —

"In this case making a report is a right open to any member of the public and not only to police officers. It is not sufficient if such act is at the same time a duty on persons holding the office he impersonated. In other words merely because making a report is a duty on a police officer is not sufficient".

The Public Prosecutor appealed against the order of acquittal to the High Court and the judge, whilst complimenting the magistrate for his admirable judgment, came to the opposite conclusion, holding that, as he read the section "it appears that the nature of the act has not to be necessarily related to the functions of the office assumed". He accordingly set aside the order of acquittal and directed that the accused be called upon to enter on his defence. Expressing some doubt in himself about the correctness of his decision, since Indian authorities seemed to be six on one side and half-a-dozen on the other, he agreed to refer the question of law for the decision of this court on an application by counsel for the accused which was seconded by the Deputy Public Prosecutor.

Strictly speaking, the criminal case had not been concluded and a reference under section 66 was premature, but, taking the practical view that our decision should have to be given eventually, we decided to hear the arguments on both sides.

On behalf of the applicant counsel repeated the arguments which found favour with the learned Magistrate. In answer, Senior Federal Counsel relied on *Emperor* v. *Aziz-Ud-Din*[1] where the accused, posing as a head constable, had bullied a fruit-seller into selling him fruit at a quarter of its actual value. It was argued on his behalf that the act which the accused did was not one which, if he really had been a head constable, he *could legally* have done. But Banerji J. held otherwise: —

"I am unable to agree with this contention. There can be no doubt that the applicant pretended to hold a particular office as a public servant, namely, the office of head constable, knowing that he did not hold such office, and that in such assumed character he attempted to do an act under colour of such office. *It is not in my opinion necessary for the application of the section that the act done under colour of office should be a legal act on the part of the accused.* If he pretended to be a police officer and as such police officer tried to extort money or things from a fruit-seller, I think the offence under section 170 was committed."

In our view the provisions of section 170 are perfectly clear. Let the provisions be read in the light of the facts of each particular case — as the judge did here — and no occasion should arise for confusion being worse confounded.

This applicant, Tomm Wong, did pretend to be a detective police constable, which he was not, and in such assumed character, wrote out his report, which act, by his signature and false description as "D.P.C. 1209", was an act done under colour of his pretended office. The contents of the report or his motive in so doing were wholly immaterial and irrelevant in relation to the charge and this, if we may say so with respect, was where the learned magistrate fell into error. Sometimes, the reference to too many so-called authorities tends to mislead and confuse. A case is only an authority on its own facts — or facts so closely similar as to be indistinguishable.

The first part of the question under reference clearly has no application to a charge under section 170 since it relates to acts done "by a person who in fact and in truth holds such office" — his acts being merely outside the scope of his authority. In such cases, of course, he would *not* be a person *pretending* to hold any particular office as a public servant. An abuse of authority is not within the ambit of section 170. But an offence under this section is committed whenever any person falsely holds himself out to be a public servant, and does or attempts to do any act whatsoever under colour of such office. The harmless character of that act or attempt may be relevant as to punishment, but the offence under section 170 is nonetheless committed whenever any act is done or attempted to be done by a person impersonating a public servant. This is our plain answer to the question.

Order accordingly.

FEDERAL TRANSPORT SERVICE CO. LTD. & ORS. v. ABDUL MALIK & ORS.

[O.C.J. (Chang Min Tat J.) February 1, 1973]

[Penang — Civil Suit No. 193 of 1972]

Companies — Suit by shareholders against directors — Position of director — Contracting with company — Preservation of company's assets — Appointment of receiver and manager.

In this case the plaintiffs, on behalf of the shareholders in a private limited liability company brought an action to restrain the defendants from acting as directors. The plaintiffs charged the defendants "with thoroughly irresponsible and unsatisfactory mismanagement" causing the company to sustain heavy losses. Among the allegations was an allegation that some of the company's buses had been leased to one of the directors.

Held: in the circumstances where there were serious disputes among the shareholders and as the assets were in